IN THE COURT OF APPEALS OF IOWA

No. 9-564 / 98-905
Filed December 13, 1999

FILED
DEC 13 1999
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

THOMAS WILLIAM BUSSEY,

Appellant.

Appeal from the Iowa District Court for Mills County, Keith E. Burgett, Judge

Thomas Bussey appeals his convictions for second-degree arson and second-degree burglary. **AFFIRMED.**

Kermit L. Dunahoo, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber and Scott Brown, Assistant Attorney Generals, and Connie E. Anstey, County Attorney for appellee.

Considered by Streit, P.J., and Miller, and Vaitheswaran, JJ.

VAITHESWARAN, J.

Thomas Bussey appeals convictions of second-degree arson and second-degree burglary, contending the trial court erred in admitting certain evidence and the evidence was insufficient to support the conviction. We affirm.

I. Background Facts and Proceedings

Bussey had a five year affair with his neighbor, Kathy Greenwood. David Greenwood divorced Kathy after learning of the affair, and Kathy married Bussey As a result of these events, Bussey and David did not have a good relationship

On the evening of August 17, 1997, David's nearly completed home caught fire. Bussey and other volunteer firefighters responded. Investigators later concluded the fire had been intentionally set, using tires and wood trim for fuel. They found muddy shoeprints on the front door of the Greenwood home and signs of forced entry The investigators seized the door and later seized a pair of size 10 Reebok tennis shoes from Bussey's home.

Bussey and co-defendant Timothy Mayberry were charged by trial information with second-degree arson and second degree burglary. Following a bench trial, the court acquitted Mayberry and convicted Bussey of both counts. The court sentenced Bussey to two concurrent ten year suspended terms, imposed a $10,000 fine, and ordered restitution. This appeal followed.

II. Admissibility of Shoe Print Comparison Evidence

The State called expert witness Eugene Czarnecki of the Department of Criminal Investigation, who compared the footprints on the Greenwood's door with

the seized tennis shoes. Bussey contends the State failed to lay a proper foundation for admission of this testimony, and the trial court accordingly erred in admitting it. We disagree.

We review challenges to the admissibility of expert opinion testimony for abuse of discretion. *State v. Schultz*, 579 N.W.2d 317, 319 (Iowa 1998). To establish a proper foundation for crime scene footprints, the State must demonstrate "similarities existed between the distinctive characteristics exhibited by defendant and the characteristics exhibited by the maker of the crime scene shoe prints." *State v. Mark*, 286 N.W.2d 396, 409 (Iowa 1979). We conclude this standard was satisfied. Czarnecki testified that the tennis shoes were consistent in outsole, tread design, and elemental size with the shoe prints on the front door of the Greenwood home. *See id.* at 396 (admitting expert analysis of prints at crime scene, performed without examining tennis shoes, which were never found). Although the shoes had no distinctive characteristics, the requirements for admissibility of footprint identification testimony are less stringent where there is other evidence connecting the defendant with the crime scene. *State v. Campbell*, 326 N.W.2d 350, 354 (Iowa 1982). The record evidence was sufficient to connect Bussey to the crime scene. Bussey was seen close to the crime scene shortly before the fire, there was evidence of forced entry into the Greenwood home, muddy tennis shoes were found near Bussey's locker at the fire station, and Bussey had access to fusee caps and tires similar to those found at the scene. Accordingly, we conclude the district court did not abuse its discretion in admitting the footprint comparison evidence.

III. Sufficiency of the Evidence

In reviewing a challenge to the sufficiency of evidence, we must determine whether there is substantial evidence to support the charge. *State v. Dible*, 538 N.W.2d 267, 270 (Iowa 1995). In addition to the footprint comparison evidence, the record reveals Bussey and Mayberry were seen close to the crime scene shortly before the fire. Additionally, a firefighter saw a pair of muddy tennis shoes in the fire station, near a locker used by Bussey and others. Further, investigators found a fusee cap at the Greenwood home similar to a cap seized from the fire station. Bussey had access to flares at the fire station and, on the evening of the fire, was seen returning to the station following a meeting, after the other firefighters had left. The investigators also recovered two tires from the Greenwood home similar to discarded tires left behind Mayberry's workplace. These tires were located a short distance from the fire station where Bussey was meeting. The investigators noticed a crack in the locking area of the Greenwood's door consistent with forced entry. None of the officers used force to enter the home. Finally, Bussey and Greenwood did not get along with each other.

We agree with the trial court's conclusion that "[t]he evidence against defendant Tom Bussey, albeit circumstantial, is overwhelming and cumulatively beyond a reasonable doubt." We conclude substantial evidence supports Bussey's conviction of second-degree arson and burglary.

AFFIRMED.